HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32(2) (b)

Description of the Case.

Criminal Appeal No. 1069 of 2001
(Old no. 617 of 1981)

Yogesh Narain Saxena ...Appellant

Versus

State ...Respondent

Approved for reporting

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Not approved for reporting.

Date of Decision 23rd November, 2004.

Initial of judge.

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HIGH COURT OF UTTARANCHALAT NAINITAL

Reserved

Criminal Appeal No. 1069 of 2001
(Old no. 617 of 1981)

Yogesh Narain Saxena S/o Sri Deep Narain Saxena,
R/o 1382 Konchghar, Chowk Jabbalpur,
P.S. Jabalpur, Madhya Pradesh
At present residing Qtr. No. 5, Gole Market,
Dark Patthar, P.S. Vikasnagar,
District- Dehradun. ...Appellant

Versus

State ...Respondent

Sri J.C. Gupta learned Senior Counsel, Assisted by Sri Sudhir Singh,Adv. for the appellant
Sri Amit Bhatt, learned A. G.A. for the State

Coram: Hon'ble M.M. Ghildiyal, J.
Hon'ble B.C. Kandpal, J.

(Delivered by Hon'ble M.M. Ghildiyal, J.)

The appellant Yogesh Narain Saxena has preferred this appeal against the judgment and order dated 04.02.1981 passed by Sessions Judge, Dehradun, convicting the accused/appellant to undergo imprisonment for life u/s 302 IPC and further rigorous imprisonment for seven years u/s 201 IPC.

Dak Patthar, which is a small market in the district of Dehradun, is mostly populated by employees of Hydle Department. Beside shops, it has residential quarters too. Appellant Yogesh Narain Saxena, a resident of Jabalpur, was employed as a Junior Electrician in the Hydle Department at Dak Patthar and was residing for the last 5-6 years prior to the date of occurrence in one of the residential quarters bearing no. 5-B of the Gole market. Sri Sunder Lal PW 3, alongwith his three brothers, namely, Rajesh Kumar PW 4, Gopal Krishna

And Pradeep Kumar were also living in the quarters of Gole Market and were running shops in front of their quarters.

According to the prosecution case, Sandeep @ Banti S/o Sunder Lal PW 3, aged about $10^{1/2}$ years was a student of class-VI. He used to learn lessons on tuition from Sri Surender Singh Patia PW 1. On 24.07.1979, from 6:30 p.m. onwards for an hour, he had his lessons on tuition from Sri Surender Singh Patia. After about an hour he went back to his home but returned back immediately to collect his inkpot which he had left at the house of Surender Singh Patia PW1. Sri Patia had seen the deceased going to collect his inkpot in the way, as by that time PW1 had already left for the club. The deceased Sandeep @ Banti was not seen thereafter, as he did not return back to his home till about 9:00 p.m. He was searched by his father, uncle and other residents of the market.

A report, written by Raj Kumar on the dictation of Rajesh Kumar, was lodged at police outpost Dak Patthar about the disappearance of deceased. Search of the deceased continued by the residents of market, alongwith S.I. Sri Jeet Singh PW 8 and few other constables. The accused/appellant who was on visiting terms with the father of the deceased Suder Lal PW 3 and also was the neighbour of Suder Lal PW 3 was present at Dak Patthar but he did not take part in search of the deceased.

On the next morning i.e. on 25.07.1979 at about 5:00 a.m., Rajendra Kumar, who is the neighbour of Suder Lal PW3, alongwith Gopal Krishna approached the accused to find out whether or not he had seen the deceased. The accused was upset and went inside his house saying that he did not know anything about the deceased. Immediately thereafter, the accused/appellant locked his quarter and went away.

On 25.07.1979 at about 9:00 a.m., father of the deceased received a telephonic message at telephone no. 55 at Dak

Patthar that his son was in the clutches of the caller, and he was required to pay an amount of Rs. 20,000/- for the release of his son, failing which Sandeep shall be killed. The deal was finally struck at Rs. 12,000/-. Sunder Lal PW 3 was directed to bring the amount and leave the same on the last step of staircase leading river Bindal under the Bindal Bridge. Sunder Lal informed the Sub Inspector about the development and a planning was made that the amount, as demanded, be left at the pointed time and place under the watch and guard of the police so that the police may capture the culprits.

According to the aforesaid plan, Sunder Lal PW 3 left the money at the place as directed, but it appeared that the culprits got scent of presence of the police and did not turn up till midnight. Thereafter, Sunder Lal and the police returned back to Dak Patthar and continued search of the deceased.

In the afternoon on 26.07.1979 at about 3:45 p.m., when Rajesh Kumar PW 4, Jagdish Prasad PW 9, S.I. Jeet Singh PW8 as well as other public witnesses, alonghwith other police constables were on the look out of Sandeep deceased, near Khadar towards south of Gole Market, they noticed, the accused coming from the opposite direction. The accused tried to run away, however, he was captured and on being interrogated by S.I. Jeet Singh, he came put with the entire story, which was recorded, in the case diary, which is Ext. Ka-28. The accused disclosed that the dead body of Sandeep was in his house and the same could be recovered by him.

The accused was arrested and was taken to his quarter. He was asked for the keys but on the saying that the keys are missing, the lock of the door and also the lock of the inside room were broken up. The accused pointed out to the box and on opening of the box the dead body of Sandeep strangulated to death, was found inside the box.

The dead body of the deceased was sealed and dispatched for autopsy, which was performed on the next day at 12:40 p.m. by Dr. P.D. Jakhmola PW 5.

The report was amended on the basis of directions issued by S.I. Jeet Singh PW8 and a case u/s 302/201 IPC was registered on 26.07.1979 at 5:15 p.m. against the accused. The accused was sent to the police outpost on that night. S.I. Jeet Singh PW 8 continued investigating the case and recording statements of the witnesses.

On 27.07.1979, when the accused was being shifted to Dehradun under arrest, the Sub Inspector further interrogated the accused about the *CHAPPALS* of Sandeep deceased. On this, the accused took the party to the rear portion of his quarter and recovered the *CHAPPALS* lying in a drain.

After completion of the investigation, the accused was sent for trial where after he was committed to the Court of Sessions.

A charge u/s 302 and 201 IPC was framed against the appellant. The accused denied of the charges leveled against him.

The accused pleaded not guilty to the charges and denied that he either murdered or concealed the dead body of the deceased. He also denied that either the dead body or the *CHAPPALS* were recovered at his instance. He also denied that he was present at Dak Patthar on the fateful night.

In the absence of any direct evidence, the prosecution relied upon in certain circumstances to establish the guilt of the appellant. The Trial Court, considering the material placed by the prosecution and after scrutinizing the entire evidence on record came to the conclusion that there were incriminating circumstances and that the prosecution had established beyond all reasonable doubt the following circumstances:-

1. The accused is admittedly almost a next door neighbour of the deceased. It is not controverted that he was on visiting terms with the father and the uncles of the deceased. In fact, he used to make purchase from the shop of P.W.'3 Sunder Lal closeby. The deceased who was a young lad of ten years used to call the accused an uncle. In view of the proximity and close affiliation, he accused had the faith and confidence of the deceased besides having unrestricted approach and access to him.
2. The accused had love marriage with a beautiful Pujabi girl about 9 or 10 months prior to this occurrence involving considerable extra financial burden specially as she was in a family way in July 1979. Apart from it, the accused owed considerable money to the club which was to be repaid and which has not so far been repaid.
3. The wife of the accused was out of station having left on 10.7.1979 to visit her parents in Uttarkashi. The accused was thus all by himself on 24.7.1979 to plan a scheme for collecting money without any hindrance from any quarter in the calm and quiet of his inner room of the quarter.
4. Strangulation of a lad aged ten years needed confidence and faith of the object to avoid cries and shouts. It was possible for the accused only with the deceased. It is noteworthy that the deceased had no other injury on his person, that the dead body was neatly and care fully packed in tin box (Ex. 1) and that the right hand was raised over the body clearly indicating that it was dumped immediately after strangulation.

5. There was no motive at all for any of the prosecution witnesses to falsely implicate the accused. There is no reason either to suppose that anybody, much less a Punjabi, was aggrieved or agitated because of inter caste marriage of the accused with a Punjabi girl. Even if it be assumed for a second that some of them had any ground to be displeased with the accused, they had no reason at all to achieve that object by killing the young son of one of their own company.

6. None else had any access or opportunity to plant dead body of the deceased inside the quarter of the accused. In any case, it was impossible for anybody else to plant a fresh dead body inside the box of the accused.

7. The accused was in Gole Market in his quarter on 24.07.79 and left the quarter at about 5:30 a.m. the next morning. What is noteworthy is that the accused admitted his presence in his quarter alongwith his wife upto to afternoon of 24.7.79 and not thereafter. This was totally false. Moreover, the accused was found to be in his quarter even in the early morning of 25.7.79 and when approached by his neighbour for enquiry about the whereabouts of the deceased he got upset and soon thereafter left locking the quarter.

8. There was a telephone call from Dehradun to PW3 Sunder Lal-father of the deceased at 9 a.m. on 25.7.79 demanding ransom and the voice of the caller resembled that of the accused.

9. Immediately after his arrest, in the afternoon of 26.7.79 the accused revealed the entire story without any coercion, compulsion or threat and stated that he could point out and recover the dead body of the deceased from inside his quarter. The statement was

followed with actual recovery of the dead body at his instance from inside the inner room of his quarter dumped in his own tin box (Ex. I) over his quilt and plastic cover.

10. Earlier assertion of the accused was that his quarter and the inner room where locked with different locks but now it is contended that they were lying open. This false assertion was necessary to prop up the story of plantation of the dead body inside the quarter by strangers.
11. Chappals of the deceased which he was wearing at the time when he disappeared too were discovered and recovered at the instance of the accused from a drain very close to his quarter in the morning of 27.7.79.
12. Last but not the least belated defence is full of omissions and lies.

Based on these circumstances, the trial court reached to the conclusion that each and every link in the chain of circumstances have been proved by the prosecution beyond all reasonable doubt. The trial court found the appellant guilty and convicted him as stated above.

Sri J.C. Gupta, learned Senior Counsel appearing for the appellant has contended that the circumstances relied upon by the prosecution either individually or cumulatively is not sufficient evidence for convicting the appellant for the crime. At the most, these circumstances would only create a suspicion and the conviction cannot be based on these suspicions. He has contended that there is no evidence to the effect that the accused was present at Dak Patthar after 5:00 p.m. on 24.07.1979. The motive in the present case is not established by the prosecution. He also pointed out that the language used in

the recovery memo should be free from doubt and if two inferences are possible, the one beneficial to the accused must be adopted. He has further pleaded that mere recovery of dead body from the house of the appellant is not sufficient to attract Section 27 of the Evidence Act and if two views are possible, then benefit of doubt should go to the accused.

In support of its case, the prosecution has examined nine witnesses.

PW 1 Surender Singh Patia, from whom the deceased used to learn his lessons, on tuition, and who lives in quarter no. 7-A, Gole Market about 10 to 15 yards away from the quarter of accused, has deposed that, as usual, when he was teaching lesson to the deceased in the evening of 24.07.1979 at his veranda, he saw the accused going in front of his quarter. PW2 Rajender Kumar Sharma, resident of quarter no. 4 and neighbour of PW3 Sunder Lal, has deposed that on the fateful night, he also took part in the search of deceased. He further deposed that in the morning of 25.07.1979 at 5 a.m. he, alongwith Gopal Krishna again started search of deceased and enquired from every house of the colony; they also approached the accused if he had seen the deceased. This enquiry upset the accused and he went inside the house informing that he did not know anything about the deceased. After about 10 minutes, the accused locked his house and went away.

PW 3 Sunder Lal, father of the deceased, has deposed that the accused was on visiting terms with him. The deceased used to call uncle to the accused. He has further deposed that the accused used to make purchases from his shop. Even on 24.07.1979, he had visited his shop for making purchase. PW 1, PW 2 and PW 3 had no ill will or grudge against the accused. PW1 and PW 2 are the independent witnesses. There is no reason to disbelieve them. When the news of disappearance of

The deceased was spread over in the town, all the neighbours and the relatives took part in the search of the deceased except the accused, though he was also a neighbor of the deceased and was on visiting terms with Sri Sundar Lal PW 3, father of the deceased.

The defence has produced three witnesses. DW 1 is the wife of the accused. She has taken a stand that she; alongwith accused had gone to Uttarkashi on 10.07.1979 where her father was posted. She, alongwith the accused came back from Uttarkashi to Dehradun on 23.07.1979. On 24.07.1979, they went to Dakpatthar to clean their house and came back to Dehradun. They had left Dakpatthar at 5:00 p.m. on 24.07.1979 and reached Dehradun by 8:00 p.m. They had a dinner on 24.07.1979. They have taken non vegetarian food at the dinner. On 25.07.1979, they remained at Dehradun. It was about 3:15 p.m. on 26.07.1979 when they came back after watching picture. The police arrested her husband and took him away to Dakpatthar on the pretext that he is required for some departmental enquiry.

DW 2 is Vijay Singh. He has deposed that on 23.07.1979,while he was going to Mussoorie, he had seen the accused at the Mussoorie Bus Stand and he had invited him for a dinner on 24.07.1979. Though he is non vegetarian but on that day there was vegetarian food at the dinner. DW 2 was a friend of the accused and was earlier posted at Dak Patthar.

DW 1 is highly interested witness. Similar is the position of DW 2 who was very friendly with the accused since 1973, as both were working in the same Department and were living at Dakpatthar.

DW 3 is Mahender Pratap Saxena, who is brother-in-law of accused and has repeated the same story as narrated by DW 1 and DW 2. He is also the feather of the same bird. There is

contradiction in the depositions of defence witnesses, as DW 1 has deposed that on the dinner they have taken non vegetarian food, whereas DW 2 who was the host, has deposed that though he is non vegetarian but on the same day he had prepared vegetarian food for the dinner. Normally, a person cannot recollect that what food he has taken on a particular day but in the instant case this principle might not apply, as it was not a dinner in normal condition but was a dinner followed by unfortunate incident. In the circumstances, there is no option available to us but to discard the testimony of all the aforesaid three defence witnesses as nothing but a tapestry of lie. On the contrary, from the deposition of PW 1, PW 2 and PW 3, it is established beyond doubt that the accused was at Dakpatthar on the fateful night of 24.07.1979. And in view of the close affiliation, the accused had the faith and confidence of the deceased as also unrestricted approach and access to him.

P.W.1 Sri Surender Singh Patia has deposed that he had seen the accused between 6:30 to 7:30 in the evening of 24.07.1979 going in front of his quarter which is near to the house of the deceased, while he was teaching lessons to the deceased on his verandah. The fact that the accused was at Dak Patthar in the night of 24.07.1079, finds corroboration from the deposition of P.W.2 Rajender Kumar Sharma who is an independent witness. He has deposed that he alongwith Gopal Krishna, in the early morning of 25.07.1979 at about 5:00 a.m., while they were in search of deceased Banti also approached the accused and asked him whether he had seen Banti? The a ccused was upset and said that he does not know about the deceased and immediately thereafter he locked the house and left Dak Patthar.

This fact is admitted by D.W.1 who is wife of the accused, that the accused alongwith D.W.1 had visited Dak Patthar on

24.07.1979. However, she has deposited that they had left Dak Patthar at about 5:00 p.m. on 24.07.1979 for Dehradun. Had it been so, there was no occasion nor was it possible for the accused being present at Dak Patthar in the early morning on 25.07.1979. All these facts show beyond reasonable doubt that the appellant was present at Dak Patthar in the night of 24.07.1979.

PW 4 is Rakesh Kumar. He is uncle of the deceased. He is first informant and also the witness of recovery of the dead body. He has deposed that on 26.07.1979 when he alongwith other neighbours and police party were in search of the deceased at about 3:45 p.m., they saw the accused coming to the Gole Market from opposite direction. They captured the accused and when interrogated by the Police Sub Inspector the accused revealed the entire story and informed that the dead body of the deceased was in the inner room of his quarter and he can recover the same. The accused led the party to his quarter. The quarter was locked. The accused informed that the keys of the locks are missing. It was then the police broke the locks open. The accused took them to the inner room of his quarter, which too was locked, and since, as the accused has said that the keys are missing, the locks of the inner room were also broken open. Thereafter, the accused pointed out to the tin box and on opening the box, the dead body of the deceased was found lying inside it. One part of the Salwar was used to strangulate the deceased. The dead body was lying in a plastic cover.

This witness has further deposed that in the morning of 27.7.1979 when the accused was being taken to District Jail, Dehradun, S.I. Jeet Singh further interrogated the accused with regard to the CHAPPALS of the deceased which he was wearing on the fateful night. The accused took the party to the rear

portion of his quarter and recovered the CHAPPALS, which were hidden in the water drain. The recovery memo was prepared with regard to the same. There is no reason to disbelieve this witness. From the testimony of this witness, it is proved that the accused was arrested near Gole Market in the afternoon of 26.07.1979 and the dead body was recovered from inside his quarter at the instance of the accused. On the instance of the accused, the CHAPPALS of the deceased were also recovered from the water drain.

The accused also admitted in his statement that he was present in the evening of 26.07.1979 when the dead body of the deceased was recovered from inside the room of his quarter. Further he has contended that the dead body was planted in his quarter by his enemies as the people of PUNJABI SECT of Dak Patthar used to bear grudge with him because he married with a Punjabi girl. But the story set-up has no substance. It is clear from the deposition of the defence witnesses that the accused was on earned leave and had gone to Uttarkashi alongwith his wife where his father-in-law was posted at the relevant time. The relations of the accused with his father-in-law were not strain. Had the relations of accused and his in laws abnormal, the accused would not have gone to Uttarkashi with his wife to see his in laws for such a long period and when the relations of accused and his in laws were normal, it is not possible to believe that the people of Punjabi Sect at Dak Patthar were not happy with the marriage of accused with a Punjabi girl.

The plea, that it was possible for some other persons to have murdered the deceased and has kept it in the inner room of the accused, is not, at all, believable. It is not, at all, possible for any other person to kill the deceased elsewhere and thereafter by opening the locks of outer room of the quarter of

the accused will inter into the internal verandah of the accused and again unlock or by broking the locks of inner room, will lay the dead body in a tin box and again will lock both the rooms and that too in a densely populated area and very near to the house of the deceased itself. The story set up by the accused is wholly unreliable and not believable. In case, the deceased-Banti was murdered by some other person who may have enmity with the accused, then he would have thrown the dead body in the verandah of the accused and would have run away from there but, in any case, he will not break up the two locks and after settling the dead body in the tin box in the inner room, again will not lock the doors of both the rooms.

PW5 is Dr. P.D. Jakhmola who has performed autopsy on the dead body of the deceased on 27.07.1979 at 12:40 p.m. He has deposed that the deceased could have died in the night of 24.07.1979 at about 8:00 p.m. On external examination, the doctor found the eye bolls bulging out and tongue protruding. Froth mixed with blood was coming out from both the nostrils. There was a ligature mark around the neck, which was well defined with a slightly depressed mark encircling the neck, horizontally and completely in a width of 4 cms. With brownish colour. Larynx and tracheas rings were found fractured. The death was due to asphyxia as a result of strangulation and ligature mark. The testimony of Dr. Jakhmola has not been controverted.

P.W.6 Brij Mohan also lives in Gole Market. He has deposed that the wife of the accused was not at home for the last about fortnight. He was with the searching party, when the accused was captured in the evening of 26.07.1979. The witness is also the witness of recovery of the CHAPPALA at the instance of the accused in the morning of 27.07.1979. This is an independent witness. There is no suggestion put to him to show

as to why PW 6 should depose falsely against the accused. His testimony is fully established beyond doubt.

PW7 is Satyavrit who is the clerk in the Telegraph Office at Dehradun. He has deposed that on 25.07.1979 he was on duty on public booth office of the Telegraph Department. He has deposed that on that day at about 8.50 a.m. a call was booked on telephone no. 55 at Dak Patthar. The call was matured at about 9:00 a.m. PW3 Sunder Lal, who is father of the deceased has also deposed that he received the telephone call at about 9:00 a.m. in the morning of 25.07.1979 at telephone no. 55 at Dak Patthar that his son was in the clutches of the caller, and he was required to pay an amount of Rs. 20,000/- for the release of his son, failing which Sandeep shall be killed. The deal was finally struck at Rs. 12,000/-. Father of the deceased was directed to bring the amount and leave the same on the last step of staircase leading to River Bindal. The caller has also informed him that he know him very well. Sri Sunder Lal has deposed that the voice of the caller had resembled with the voice of the accused. The deposition of P.W.7 finds corroboration with the deposition of PW3.

PW8 is S.I. Jeet Singh. He is the Investigating Officer. He has deposed that soon after the report of disappearance of the deceased was lodged 24.07.1979, he commenced the investigation in the morning of 25.07.1979, the father of the deceased disclosed him the conversations taken on between him and the caller on telephone and, as such, he escorted PW3 to Dehradun with money in the evening of 25.07.1979. Since it was not taken up by the culprit, the party came back to Dak Patthar. On 26.07.1979 when they were in search of the deceased alongwith other constables and the residents of the Gole Market, they captured the accused who was coming from the opposite direction from the Gole Market in the afternoon of

26.07.1979 and thereafter made recovery of the dead body of the deceased inside the quarter of the accused and also recovered the CHAPPALS of the deceased, in the next morning. at the instance of the accused. He has deposed that when he alongwith other police constables and the residents of the locality went to recover the dead body at the instance of the accused, the accused told them that the keys of the locks were missing consequently the locks of both the outer and inner room were broken open. The facts narrated by the investigating officer find corroboration from the deposition of other witnesses.

PW 9 is Jagdish Prasad who is also resident of the Gole Market, Dak Patthar, has deposed that he is well acquainted with the deceased Banti and also with the accused Yogesh Narain. His testimony finds corroboration with other witnesses that the accused was arrested on 27.07.1979 near Gole Market and on the instance of the accused the dead body of the deceased was recovered from the inner room of the accused. He has also deposed that when he, accompanied with the searching party, reached at the house of the accused, the house was locked and on saying by the accused that the keys are missing, the locks were broken open and the body was recovered on the pointing out of the accused from a tin box kept in the inner room of the house of the accused. The recovery memo was prepared and he is also a witness to that recovery memo. This witness has also deposed that at the time of breaking the locks open, apart from various residents of the locality, Sri Sunder Lal PW3, Rajesh PW4, Gopal Krishna and Pradeep were also present there.

Since there is no eye witness of the incident, the case is based on the circumstantial evidence. **The Apex Court in catena of decisions has laid down principles to follow**

The conditions which should be fulfilled before the case against the accused can be said to be fully established on the basis of the circumstantial evidence.

In the case of **Sharat Birdhi Chand Sarda vs. State of Maharashtra AIR 1984 Supreme Court 1622.** the Apex court in para 153 has laid down the golden principles which are as follows:-

i.) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

The circumstances concerned 'must of should' and not 'may be' established.

Certainly it is primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

ii.) The facts so established should be consistent only with the hypothesis of the guilt of the accused that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

iii.) The circumstances should be of a conclusive nature and tendency;

iv.) They should exclude every possible hypothesis except the one to be proved.

v.) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

Learned counsel for the appellant has submitted that the learned Sessions Judge was not right in disbelieving the testimony of DW1 and DW2 only on the ground that DW1 has deposed that they had a dinner on 24.07.1979 in which they have taken non vegetarian food at the dinner whereas DW2 who is was host of the dinner has deposed that though he is non vegetarian but on that day there was non vegetarian food for the dinner. It is true that the prosecution cannot derive any

strength from a false plea unless it is proved that is a case with absolute certainty.

Here, the prosecution has established its case fully beyond all reasonable doubt and in these circumstances when there are contradictions in the statements of DW1 and DW2, the learned Sessions Judge has rightly disbelieved the deposition of the defence witnesses. The plea of learned counsel for the appellant that it is not possible to remember that what food a person has taken on a particular day, is not applicable, as the dinner which the accused has taken on 24.07.1979 was not an ordinary dinner but a dinner followed by an unfortunate incident. Secondly, DW1 has deposed that the police arrested her husband from Dehradun on the pretext that he is required for some departmental enquiry at Dak Patthar. It is unbelievable that why DW1 has not accompanied the accused any why she kept mum till she read in the news paper on 28.07.1979 that her husband has been arrested by the police. Of course, on the basis of these contradictions the accused cannot be convicted but certainly when the case of prosecution is proved beyond doubt, the false plea of defence give additional support to the case of the prosecution.

It is admitted by the defence that the accused was on earned leave from 10th July till 30th July, 1979 and had gone alongwith his wife to Uttarkashi, as her wife was in family way. So it is proved that the relations between the accused and his father-in-law were normal and the relations were not strained on account of marrying with a Punjabi girl. It is also not believable that when the accused was on earned leave from 10th July to 30th July, 1979 why he came back on 23rd July and when he came back on 23rd instead of 30th July for living in his quarter at Dak Patthar, why he chose to stay at Dehradun for three days. Further DW1 has contended that they had gone to

Dak Patthar to clean their house and came in the morning of 24th July and came back to Dehradun on the same day at 5:00 p.m. It is a normal human behaviour that when somebody is out of his house for a long period, he will clean the house before 10 days of his coming back. Therefore, on these contradictions in the statements of defence witnesses, the learned Sessions Judge has rightly disbelieved their testimony.

If the circumstances taken altogether, namely, the accused had friendly relations and close proximity with the family of the deceased; the deceased was seen by the witnesses in the evening between 6:30 to 7:30 p.m. on 24.07.1979 at Dak Patthar and was again seen by the prosecution witnesses at about 5:00 a.m. on 25.07.1979; the inhuman behaviour of the accused not to take part in the search of the deceased, though he was neighbour of the deceased and well known to him and further, on the next day i.e. on 25.07.1979 when he was asked about the deceased he was upset and had left Dak Patthar immediately after locking his house; recovery of the dead body at the instances of the accused from a tin box in the inner room of the accused; recovery of ***CHAPPALS,*** which the deceased was wearing on the last evening, at the instance of the accused from the water drain of the rear portion of his house and to conceal the evidence, are fully established to fix the liability of the murder on the accused.

Learned counsel for appellant has submitted that weakness of the defence cannot be used as a link to complete the chain of circumstances. In support of his arguments, he has placed reliance on various judgments of the Hon'ble Apex Court. He has placed reliance on para 151 and 153 of the case reported in AIR 1984 SC page 1622 Sharat Birdhi Chand Sarda

Vs State of Maharashtra (Supra) in which the Apex Court has held as under:-

"It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete, then a false please or a false defence may be called into aid only to lend assurance to the court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a court."

"A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade V. State of Maharashtra (1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Cri LJ 1783) where the following observations were made : [SCC para 19, p. 807:SCC (Cri) p. 1047]

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and

'must be' is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the fact must have been done by the accused."

The learned Sessions Judge, after careful consideration of evidences lead by the prosecution, came to the conclusion, that the prosecution has proved its case beyond reasonable doubts. No link of the chain of circumstances is missing, and every link is proved beyond doubt. It is not a case where the trial court has completed the chain of circumstances on the basis of weaknesses of the defence. The Apex Court has also held that where various links in a chain are in themselves complete from a false plea or the false defence may be called into aid only to lend assurances to the court. The learned Sessions Judge has found all the links in the chain of circumstances complete and, as such, has not used the weaknesses of the defence to fill up the lacunae. From the evidence of prosecution it is proved that the accused was present at Dak Patthar in the night 24.07.1979 when the deceased was murdered. This fact is proved from the deposition

of PW 1 and PW 2 who are independent witnesses. PW 1 in his statement has deposed as under:

" मुलजिम यौगे नारायण हाजिर अदालत भी गोल मार्केट ढाकपत्थर में ही रहता है। मेरे क्वार्टर से 10–15 कदम की दूरी पर रहता हैं जब मैं उस भाम बंटी को पढा रहा था तो मुलजिम मेरे क्वार्टर सामने से गुजरा था और मैंने उसको गुजरते देखा था। मुलजिम अपने क्वार्टर की तरफ जाते देखा था। "

PW 2 Rajendra Kumar in his deposition has deposed as under:

"रात में हमने बंटी को ढूडा मगर वह नहीं मिला। फिर अगले दिन सुबह करीब 5 बजे मैं व गोपाल घर–घर पूछने गये कि क्या किसी ने बंटी को देखा था। हम पता करने मुलजिम योगे ा नारायण के घर भी गये। गोपाल ने योगे ा नारायण से भी पूछा तो मुलजिम घबरा गया और यह कहकर कि मुझको कुछ नहीं मालूम अंदर चला गया। यह बात सुबह करीब सवा पॉच बजे की है। फिर थोडी देर बाद हम अपेन क्वार्टर पर आ गये। 10–15 मिनट बाद हमने मुलजिम को अपने क्वार्टर का ताला लगाकर जाते देखा। गोपाल बंटी का सगा चाचा है।"

Thereafter at about 9:00 a.m. PW 3 Sri Sunder Lal received telephone call from Dehradun. The voice of the caller was similar to the accused. All these evidences fully proved that the accused was present at Dak Patthar in the night of 24.07.1979 and has left Dak Patthar for Dehradun in the early morning at about 5:30 a.m. on 25.07.1979.

From the evidence of Dr. P.D. Jakhmola who has conducted autopsy as also from the evidence of PW 4, PW 8 and PW 9 in which they have deposed about the position and conditions in which the dead body was discovered, prove that the body of Bunti was placed inside the tin box, immediately after strangulation. These material points find support from the deposition of doctor that the deceased was murder at about 8.00 p.m. on 24.07.1979.

Learned counsel for the appellant has further pleaded that if two views are possible, one pointing to the guilt of the accused and the other to his innocence, the court should adopt the view

Favourable to the accused. In support of his argument, he has placed reliance in the case of Harender Narain Sing vs. State of Bihar reported in AIR 1991 Supreme Court Page 1842.

It is well settled law as held by the Apex Court in series of cases that where on the evidence two possibilities are available or open, one goes in favour of prosecution and other gives benefit to the accused, the accused is undoubtedly entitled to the benefit of doubt.

Learned counsel for the appellant has contended that it was possible that the deceased was killed by his enemies elsewhere, and the dead body was placed in the room of accused because the Punjabi Sect of Dak Patthar used to bear grudge with him, as he married with a Punjabi girl.

The story set up by the defence is not, at all, believable. It was impossible to believe that someone would kill the deceased elsewhere and thereafter would shift the dead body in a inner room of the accused after unlocking two locks and thereafter again would lock the doors of both the rooms, specially when the house of the accused is very near to the house of the deceased and that too in a small colony like Dak Patthar.

In case the culprit was someone else, the human conduct is that he would have thrown the dead body in the verandah of the accused and would have not taken risk to unlock two rooms to hide the dead body and would keep the dead body in a tin box kept in the inner room of the accused. In the circumstances stated above, there is no possibility of two views and the learned Sessions Judge has rightly came to the conclusion that none else had any access or opportunity to plant the dead body of the deceased inside the quarter of the accused rather, it was impossible for anybody else to plant a fresh dead body inside the box placed in the inner room of the quarter of the accused.

From the deposition of prosecution witnesses it is fully proved that the accused was arrested by the police in the afternoon of 26.07.1979 near Gole Market and the dead body of deceased was recovered from a tin box kept in the inner room of the quarter of the accused. The recovery was made on the pointing of the accused. Further, it is also proved beyond reasonable doubt that ***CHAPPLS,*** which the deceased was wearing at the time of his disappearance, were also recovered on the pointing of the accused from the drain in the rear portion of the quarter of the accused.

From the discussions in the forgoing paragraphs, we found no infirmity in the impugned judgment and the judgment of the Session Judge is unassailable and accordingly the appeal is dismissed.

Record shows that the appellant is on bail. Hence, the record of the court below be returned immediately so that appropriate steps be taken in order to take the appellant into custody.

(B.C. Kandpal, J.) **(M.M. Ghildiyal, J.)**

November 23, 2004:
NCM: